

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**FARMERS DIRECT PROPERTY AND CASUALTY
INSURANCE COMPANY**

PLAINTIFF

VS.

CIVIL ACTION NO: 3:22cv188-KHJ-MTP

JONATHAN ELIJAH YATES

DEFENDANT

AGREED STIPULATION OF FACTS

COMES NOW, Plaintiff Farmers Direct Property and Casualty Insurance Company and Defendant Jonathan Elijah Yates, by and through their respective counsel of record, and file this their Agreed Stipulation of Facts in the above matter, and in support thereof would show until the Court as follows:

Both Plaintiff and Defendant agree that all material and relevant facts to the resolution of the issues presented in this matter are undisputed, and the parties submit that, with the below stipulated and agreed facts, the parties should be capable of filing competing Motions for Summary Judgment for the Court's consideration which should allow for the expedited resolution of this matter. Therefore, both Plaintiff and Defendant agree and stipulate to the following material and relevant facts:

1. On July 18, 2020, Defendant Elijah Yates was riding as a guest passenger in a vehicle leased by Mitzi Birks and Garry Birks and being driven by their grandson, Camron Flynn which was involved in a single vehicle accident on West Sowell Road in Madison County, Mississippi.
2. The subject accident was caused by the negligence of Camron Flynn.
3. At the time of the subject accident, the vehicle being driven by Camron Flynn and occupied by Defendant Elijah Yates was insured under a personal automobile insurance policy issued by Plaintiff Farmers Direct Property and Casualty Insurance Company (formerly known as Metropolitan Direct Property and Casualty Insurance Company), bearing Policy No: 9564110730.

4. A true and correct copy of the aforementioned automobile insurance policy issued by Farmers Direct Property and Casualty Insurance Company is attached hereto as Exhibit A.
5. The subject personal automobile insurance policy issued by Farmers Direct Property and Casualty Insurance Company provided Liability Coverage with a limit of \$100,000 per person.
6. The subject automobile insurance policy issued by Farmers Direct Property Casualty Insurance Company also provided Uninsured/Underinsured Motorist Coverage with a limit of \$100,000 per person.
7. The subject automobile insurance policy issued by Farmers Direct Property and Casualty Insurance Company insured four (4) total vehicles, specifically a 2020 Nissan Altima (the vehicle involved in the subject accident), as well as a 2005 Dodge Magnum, a 1996 Pontiac Firebird, and a 2013 Jaguar XJL.
8. Separate premiums were paid for the uninsured/underinsured motorist coverage under each of the four (4) vehicles insured under the subject policy.
9. Farmers Direct Property and Casualty Insurance Company, on behalf of Mitzi and Garry Birks and Camron Flynn, has offered, and Elijah Yates has accepted, the \$100,000 Liability Coverage limits provided under the subject policy to Elijah Yates in full and final settlement of any and all claims Mr. Yates may have against the Birks and/or Camron Flynn.
10. As a guest passenger in the subject vehicle insured by Farmers Direct Property and Casualty Insurance Company, Elijah Yates is considered an “insured” for purposes of Uninsured/Underinsured Motorist Coverage.
11. Farmers Direct Property and Casualty Insurance Company, as an uninsured/underinsured motorist, is entitled to a liability set off or off set, sometimes referred as the “*Keuhling* or set off or off set”, for the \$100,000 Liability Coverage being paid to Elijah Yates against any Uninsured/Underinsured Motorist Coverage which also may be owed by Farmers Direct Property and Casualty Insurance Company under the subject policy.
12. In addition to being an “insured” for the purposes of Uninsured/Underinsured Motorist Coverage under the aforementioned Farmers Direct Property and Casualty Insurance Company policy, Elijah Yates is also insured under two other separate personal automobile insurance policies issued by State Farm Mutual Automobile Insurance Company, both of which provide \$25,000 per person Uninsured/Underinsured Motorist Coverage.

13. As a resident family member of State Farm Mutual Automobile Insurance Company's named insureds, Elijah Yates is entitled to a total of \$50,000 in uninsured/underinsured motorist coverage under the two above referenced policies issued by State Farm Mutual Automobile Insurance Company.
14. In light of Elijah Yates having \$100,000 in Uninsured/Underinsured Motorist Coverage provided under the aforementioned policy issued by Farmers Direct Property and Casualty Insurance Company and \$50,000 in Uninsured/Underinsured Motorist Coverage under the aforementioned policies issued by State Farm Mutual Automobile Insurance Company, Mr. Yates has at least \$150,000 combined Uninsured/Underinsured Motorist Coverage available to him as a result of the subject accident.
15. With Camron Flynn, the at-fault motorist who caused this accident, having only \$100,000 per person liability coverage limits, Camron Flynn is an "underinsured motorist".
16. Elijah Yates has suffered in excess of \$450,000 in economic and non-economic damages as a proximate result of the subject accident.
17. Elijah Yates alleges that he is entitled to "stack" or "aggregate" the \$100,000 per person Uninsured/Underinsured Motorist Coverage limits provided under the subject policy issued by Farmers Direct Property and Casualty Insurance Company pursuant to the Mississippi Court of Appeals opinion of *Brewer v. Miss. Farm Bureau Casualty Insurance Company*, 328 So.3d 721 (Miss. Ct. App. 2021), such that there is \$400,000 in stacked Uninsured/Underinsured Motorist Coverage available to him under the subject policy issued by Farmers Direct Property and Casualty Insurance Company, and that, after offsetting the aforementioned \$100,000 Liability Coverage payment made by Farmers Direct Property and Casualty Insurance Company on behalf of Camron Flynn, Mr. Yates is entitled to the recovery of \$300,000 in remaining Uninsured/Underinsured Motorist Coverage from Farmers Direct Property and Casualty Insurance Company for the injuries he sustained in the subject automobile accident.
18. Farmers Direct Property and Casualty Insurance Company contends that, as a guest passenger in the Farmers Direct insured vehicle, Mr. Yates is considered a Class II insured under the Farmers Direct policy and that, as a Class II insured, pursuant to the Mississippi Supreme Court opinion in *Meyers vs. American States Insurance Company*, 914 So.2d 669 (Miss. 2005), and Mississippi Court Appeals opinion in *Brewer vs. Miss. Farm Bureau Casualty Insurance Company*, 328 So.3d 721 (Miss. Ct. App. 2021), Elijah Yates is not entitled to "stack" or "aggregate" the \$100,000 per person Uninsured/Underinsured Motorist Coverage limits provided under the subject Farmers Direct policy, but rather is limited to the recovery of the single \$100,000 per person Uninsured/Underinsured Motorist Coverage limit, and that, after offsetting the aforementioned \$100,000 Liability Coverage limit being paid to Elijah Yates by Farmers Direct Property and Casualty Insurance Company, Farmers Direct Property

and Casualty Insurance Company does not owe any Uninsured/Underinsured Motorist Coverage limit to Elijah Yates for the injuries allegedly sustained as a result of the subject accident.

19. The sole issue to be resolved in this matter is whether or not Elijah Yates, as a Class II “insured” under the Farmers Direct Property and Casualty Insurance Company policy is entitled to stack the \$100,000 per person Uninsured/underinsured motorist Coverage limit by the four (4) separate vehicles insured under that policy or whether Mr. Yates is limited to the single \$100,000 limit provided on the vehicle involved in the subject accident.

SO STIPULATED AND AGREED on this the 16th day of May, 2022.

JONATHAN ELIJAH YATES

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